

COMPATIBILITY DETERMINATION

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) states that “The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access wherever [s]he determines that such uses are compatible’ and that “... the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” A compatible use is defined as “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” The compatibility determination is to be a written determination signed and dated by the Refuge Manager and Regional Chief of the National Wildlife Refuge System, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.

Applicable compatibility regulations in 50 CFR Parts 25, 26, and 29 were published in the Federal Register October 18, 2000 (Vol. 65, No. 202, pp 62458 – 62483).

Use: Tesoro Pipeline Right-Of-Way

Refuge: Kenai National Wildlife Refuge

Establishing and Acquisition Authorities: The Refuge was first established as the Kenai National Moose Range by Executive Order 8979 on December 16, 1941. The boundaries were modified, purposes expanded, and name changed to Kenai National Wildlife Refuge under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371).

Refuge Purposes: The Executive Order purpose was primarily to “... protect the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska...”. ANILCA purposes for the Refuge include: “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; (iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife oriented recreation.” The Wilderness Act of 1964 (Public Law 88-577) purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System,

and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

Policy (FWS 603 2.8) directs that pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA. The Executive Order purpose to protect Kenai moose, however, is treated as complimentary to the broader ANILCA purpose of conserving fish and wildlife populations; therefore, no special attention is given the Executive Order purpose in this compatibility review process.

Sec. 4(a) of the Wilderness Act provides that the purposes of the Act are to be within and supplemental to the purposes for which National Wildlife Refuges are established and administered. These purposes are applied to the approximately 1.3 million acres of Congressionally designated wilderness within the Refuge. They are also applied to the remaining approximately 700,000 acres of Refuge lands (that are not designated as wilderness) in any way that the proposed use might affect the designated wilderness areas.

National Wildlife Refuge System Mission: The National Wildlife Refuge System Mission is “To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Description of Use Tesoro Alaska Pipeline company has requested renewal of an existing right-of-way for their 30 year permit issued February 25, 1976. The permit granted permission to enter and occupy lands within the Refuge to install, operate, and maintain a 10-inch petroleum products pipeline within a 50-foot right-of-way. The pipeline has received routine maintenance over its life and continues to serve an important purpose of delivering refined petroleum products from the Tesoro Refinery in Nikiski on the Kenai Peninsula to a receiving station at the Ted Stevens Anchorage International Airport and the Port of Anchorage. Refined products include aviation jet fuel, home heating fuel, automotive gasoline, marine diesel, and on-road and off-road diesel. Annual quantity of product transported is approximately 11,000,000 barrels (or approximately 462 million gallons).

The total length of the buried pipeline is 68.7 miles, including the marine portion within Cook Inlet. Only a small portion of the buried pipeline is within the Refuge, approximately 4,700 feet. The buried pipeline enters the Refuge near Point Possession, specifically at the NW1/4 Section 20, T 11 N, R 6 W, Seward Meridian, continuing northeast, east, and then northeast again in Section 17, T 11 R6 W, Seward Meridian, leaving the Refuge at the line of mean high tide.

Maintenance of the right-of-way varies in duration and impact depending on the nature of the task. Right-Of-Way observation is performed bi-weekly by aircraft and a surface inspection by ATV or snowmobile is performed monthly. Vegetation clearing is generally on a two to three year cycle with a combination of hand and mechanical clearing. Propane is transported to Pt. Possession for cathodic protection (of marine portions of the pipeline) via the beach from Captain Cook State Park and along the pipeline R-O-W from the beach to the rectifier. “Pigging” (in-line pipeline inspection) and other pipeline maintenance and monitoring occurs without notice or impact on the Refuge.

Availability of Resources: No new construction or operational changes are proposed with the requested permit renewal. Current administrative costs incurred by the Refuge in permit

administration and monitoring are minimal, generally limited to a request for right-of-way maintenance every 3 to 5 years, to pipeline maintenance every 5 to 10 years. These requests are generally covered with a special use permit following discussion with Refuge staff, and are followed-up with one or more site inspections. Since there is no proposed change in operations that would significantly impact Refuge staff or resources, it is determined that adequate resources continue to exist to properly manage this Refuge use.

Anticipated Impacts of the Use: Congressional intent in applying compatibility reviews to existing rights-of-way (at the time of the National Wildlife Refuge System Administration Act 1997 amendments) dictates that no new interpretation of compatibility requirements established by the Act should be interpreted as finding existing long-term permitted uses of refuges not compatible –presuming no significant changes have occurred to when they were initially permitted (and determined to be compatible). Regulations (50 CFR 25.21 (h)) prescribe that when evaluating compatibility in the re-authorization of these historic rights-of-way, that the analysis of impacts will be based on existing conditions with the use in place, not from a pre-use perspective. In other words, only modifications from the historic permitted use are to be analyzed for impacts. An example of this would be if the proposed renewal requested replacing the existing 10-inch pipeline with a 16-inch pipeline, or if the request desired to replace the existing buried pipeline with a new above ground pipeline, etc. Since the request for permit renewal includes no modifications over the existing operational conditions, there are no significant issues to analyze.

Ongoing impacts to the area would continue through vegetation management within the 50-foot right-of-way. Pipeline repairs also may occur within the life of the renewed permit that could require equipment and crews trenching and repairing or replacing portions of the pipe. Historically Refuge lands have also been requested for use to stage equipment and crews onshore for work on areas of the pipeline for the Cook Inlet marine crossing. The cleared right-of-way encourages illegal ATV trespass adjacent to and within Congressional Wilderness. Industrial use of ATVs and snowmachines provided a regular, though not likely significant level of motorized disturbance in the area via routine right-of-way inspections. Equipment and crews conducting maintenance operations can impact Wilderness values with noise, use of tideland areas with machinery or storage of materials, and the potential of spills from equipment. Risk of petroleum product spill from a pipeline failure is also a potential concern.

A navigational warning sign posted on the Refuge at Point Possession is a regulatory requirement but also creates a visual infraction on an otherwise pristine portion of Kenai Wilderness.

Public Review and Comment: This compatibility determination was subject to a 30-day public comment period. A public notice was published in the Legal Notices section of the Anchorage Daily News on February 26, 2006 and in the Kenai Peninsula Clarion on February 28, 2006. One comment letter was received, from the State of Alaska. The State strongly supported the renewal of the existing right-of-way and stated that they did not believe that the use would materially interfere with the purposes of the Refuge.

Determination (check one below):

_____ Use is Not Compatible

 X Use is Compatible With Following Stipulations

Stipulations Necessary to Ensure Compatibility: The original (1976) permit included 29 terms and conditions to ensure compatibility. Each of these stipulations are being included in the permit renewal, unless modified to address changes in regulations or policy, or to address new conservation or administrative concerns. Additionally, regulations require that any re-authorized rights-of-way permits must have a condition that allows for permit modification at any future time to ensure compatibility. This allows for additional permit stipulations to be added over the life of the permit because of new information, technologies, or concerns, and does not require waiting for the permit to expire (as is the case with historic permits). See attached R-O-W permit for a full set of conditions.

Justification: The request for renewal of a long-standing right-of-way use has no new operational aspects that would impact the original compatibility determination for the use. Industrial standards and regulatory oversight have increased over the years as well. The proposed new permit conditions address Refuge concerns and include the ability to modify the permit conditions at any time to ensure compatibility.

Signature (Refuge Manager):

John D. Wheat 4/10/06
Signature and Date

Concurrence (Regional Chief):

Mike Boylan (Acting) 5/24/06
Signature and Date

Mandatory 10-year Re-evaluation Date: N/A - Rights-of-Way often are approved for extended periods of time. The National Wildlife Refuge System Administration Act of 1966, as amended, treats Refuge uses that are approved for longer than 10 years differently than other uses. During the life of the permit only compliance with the terms and conditions of the authorization are to be examined, not the authorization itself. After expiration of the permit, the use is to be re-evaluated for compatibility.

Permit P-3-KE
(Formerly designated Permit No. G-4)
Tesoro Alaska Pipeline Company
Buried Petroleum Product Pipeline

THE SECRETARY OF THE INTERIOR, through her authorized representative, the Regional Director, Region 7, of the U.S. Fish and Wildlife Service, hereinafter referred to as "the Service" in accordance with 16 U.S.C. § 668dd (d), 50 C.F.R. §§ 25.21, 29.21, 16 U.S.C. § 3161-3173, 43 C.F.R. § 36, and 30 U.S.C. 185, does hereby grant a permit to Tesoro Alaska Pipeline Company, herein referred to as Permittee, to use and occupy certain land within the Kenai National Wildlife Refuge, hereinafter referred to as "the Refuge".

This right-of-way permit authorizes the continued operation and maintenance of a buried 10-3/4 inch petroleum products pipeline that enters the Refuge in an area known as Point Possession, the location of which is more specifically described as a portion of the NW ¼ NW ¼ of Section 20, Township 11 North, Range 6 West, Seward Meridian, continuing northeast into Section 17, Township 11 North, Range 6 West, Seward Meridian, thence eastward and finally northeast leaving the Refuge at the SE ¼ SE ¼ of Section 17, Township 11 North, Range 6 West, Seward Meridian. The authorized area is comprised of a total length of approximately 4,700 feet and a width of 50-feet. The authorized area is depicted on a map entitled "Point Possession Area Map", which is incorporated into this permit as attached "Exhibit A".

This permit is granted subject to outstanding rights, if any, in third parties. Permittee, by accepting this permit, agrees to the terms and conditions contained herein.

TERM AND RENT:

The term of this permit is for thirty (30) years or while it is used for the purpose granted, whichever period is shorter. The Permittee has the option to apply for renewal of the permit. The term of the permit shall commence upon signature by both parties. The Permittee is required to make a rental payment in advance for use and occupancy of lands. The annual rental amount, as established by the U.S. Fish and Wildlife Service Annual Fee Schedule (Fee Schedule), as of the date of issuance is \$339.00 annually or a lump sum payment of \$1,695.00 for five (5) years. Payment(s) must be payable to the U.S. Fish and Wildlife Service and forwarded to the attention of the Chief, Division of Realty, 1011 East Tudor Road, MS 211, Anchorage, Alaska 99503. Rental rates may be reviewed and adjusted by the Service at any time not less than five (5) years after the grant of the permit or the last revision of charges. Should the Fee Schedule be adjusted, then the rental rate would be adjusted accordingly. The Service will furnish a notice in writing to the Permittee of intent to impose new charges commencing with the ensuing charge year. The revised charges will be effective unless the Permittee files an appeal according to 50 C.F.R. 29.22.

GENERAL TERMS AND CONDITIONS:

(1) Meanings of certain terms used herein:

(a) The term "authorized officer" means the Refuge Manager, Kenai National Wildlife Refuge, or officer in charge of the land under administration by the U.S. Fish and Wildlife Service.

(b) The terms "wildlife resource" and wildlife resources" includes all fish, animals and birds and all vegetation including trees, plants, shrubs, grass, muskeg and marsh within, on, under or over the permit area; and all lands, waters and all beds of waters within the permit area and all appurtenances to lands and waters and beds of waters within the permit area, whether natural or constructed.

(2) The permit herein granted is for the specific use described and may not be construed to include the further right to authorize any other use within the permit area unless approved in writing by the Service.

(3) By accepting this permit, the Permittee agrees to reimburse the United States for costs incurred by the Service in monitoring the operation, maintenance, and removal of facilities within or next to the permit area.

(4) The authorized officer will monitor compliance with permit stipulations.

(5) A Surety Bond in the amount of \$200,000 in favor of the United States of America will be required to insure the faithful performance of the terms and conditions and special stipulations set forth in this permit and contained herein, and for faithful performance of all terms and conditions of the Special Use Permit issued for maintenance. Such bond to be provided within 30 days of validation of this right-of-way permit. If not provided this permit is subject to immediate cancellation. This bond will not relieve the Permittee from liability for damage over and above the total amount of the bond unless the surety shall make payment therefore, and the bond will not relieve the Permittee from the forfeiture and other penalty or damage provisions of these permits.

(6) Permittee must comply with State and Federal laws applicable to the project within which the permit is granted, and to the lands included in the right-of-way, and lawful existing regulations thereunder.

(7) The Chief, Division of Realty, and the authorized officer must be kept informed of the address of the Permittee's principal place of business.

(8) Permittee will not disturb or remove any public land survey monument or project

boundary monument, unless Permittee requests and receives from the authorized officer approval of measures the Permittee will take to perpetuate the location of an aforesaid monument.

(9) Permittee shall pay the United States the full value for all damages to the lands or other property of the United States caused by Permittee, its employees, contractors, or employees of the contractors. Permittee indemnifies the United States against any liability for damages to life, person or property arising from the use of the lands under the permit. Where the permit involves lands that are under the exclusive jurisdiction of the United States, the holder or its employees, contractors, or agents of the contractors, will be liable to third parties for injuries incurred concerning the easement or permit area. The grant of this permit imposes liability without fault for injury and damage to the land and property of the United States up to a maximum of \$1,000,000.00.

(10) In the installation, operation, and maintenance of the project, Permittee will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(11) The Permittee is responsible for ensuring that all persons working for the Permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of this permit.

(12) Grant of the permit is subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The Permittee agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees, of any part of the permit area not actually occupied for the purpose of the granted rights to the extent that it does not interfere with the full and safe utilization thereof by the Permittee. The Permittee also agrees that authorized representatives of the United States will have the right of access to the permit area for making inspections and monitoring the construction, operation and maintenance of facilities.

(13) The permit is subject to the express covenant that any facilities constructed thereon will be modified or adapted, if such is found by the Service to be necessary, without liability or expense to the United States, so that such facilities will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with the permitted project.

CONSERVATION MEASURES

(14) Permittee will do everything reasonably within its power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near lands to be occupied under this permit, including making available such construction and

maintenance forces as may be reasonably obtainable for the suppression of such fires.

(15) Disturbed land areas will be restored by the Permittee to their original condition as is reasonably possible to do by contouring, utilization of certain seeds and fertilizer, forest debris, and by other methods as may be necessary and acceptable to the authorized officer.

(16) All vegetative and other material cut, uprooted, or otherwise accumulated during the maintenance of the right-of-way will be disposed of by the Permittee in the manner directed by the authorized officer.

(17) Permittee must take such soil and resource conservation and protection measures, including weed control, on the land covered by the easement or permit as the authorized officer may request.

(18) Any problems with wildlife must be reported immediately to the authorized officer. The Permittee, contractors, and employees shall not feed animals. Wildlife shall not be harassed or intentionally approached closely enough to disrupt the animal's activity or to endanger human life. There shall be no taking of any animal except in the case of defense of life and property. In the case of a defense of life and property taking, the Permittee shall immediately contact the Alaska Department of Fish and Game and the authorized officer, and salvage those parts of the animal required by State regulations.

(19) Permittee will comply with the Archaeological Resources Protection Act (16 U.S.C. 470aa). The disturbance of archaeological or historical sites and the removal of artifacts from Federal land are prohibited. If such sites or artifacts are encountered, the Permittee will immediately cease all work upon Federal land and notify the authorized officer.

DISPOSAL, TRANSFER OR TERMINATION OF INTEREST:

(20) All or part of this permit may be terminated by the Service, for failure to comply with any or all of the terms or conditions of the grant, or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the Permittee to use for any continuous 2-year period the permit for the purpose for which it was granted or renewed. In the event of noncompliance or abandonment, the Service will notify the Permittee in writing of its intention to suspend or terminate the grant 60 days from the date of the notice, stating the reasons therefore, unless before that time the Permittee completes such corrective actions as are specified in the notice. The Service may grant an extension of time within which to complete corrective actions when, in its judgment, extenuating circumstances not within the Permittee's control such as adverse weather conditions, disturbances to wildlife during breeding periods or periods of peak concentration, or other compelling reasons warrant. Failure to take corrective action within the 60-day period will result in suspension or termination of the permit.

(21) Permittee shall restore the land to its original condition to the satisfaction of the authorized officer, so far as it is reasonably possible to do so upon revocation and/or termination of the permit, unless this requirement is waived in writing by the Service. Final inspection of the site will be by the authorized officer or his designee and will be at the expense of the Permittee.

(22) The final disposal by the United States of any tract of land traversed by a right-of-way will not be construed to be a revocation of the right-of-way in whole or in part. Such final disposition will be deemed and taken to be subject to such right-of-way unless it has been specifically canceled.

(23) Any proposed transfer, by assignment, lease, operating agreement or otherwise, of this permit, or any of the rights conferred by this permit, must be filed in triplicate with the Chief, Division of Realty. Additionally, it must be supported by written agreement by the transferee to comply with and be bound by the terms and conditions of the original grant and applicable amendments if any. A \$25.00 nonreturnable service fee must accompany the proposal. No transfer will be recognized until approved in writing by the Service.

SPECIAL STIPULATIONS:

(24) A special use permit is necessary for pipeline corridor maintenance and will be issued by the authorized officer to cover use of equipment, clearing of the right-of-way, pipeline repair work, restoration of disturbed areas, season of maintenance work, and other operations associated with this project to provide maximum protection for the environment as it concerns Refuge lands.

(25) In order to protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline, all facilities authorized under this permit must be designed, constructed and operated in accordance with the provisions of Parts 192 and/or 195 of Title 49 of the Code of Federal Regulations and in accordance with the Occupational Safety and Health Act of 1970, Public Law 91-596, including any amendments thereto.

(26) Activities in connection with this permit will not violate State and Federal laws applicable to air and water quality standards.

(27) All activities will be conducted with due regard to the protection of all wildlife resources and in accordance with the directions and instructions of the authorized officer and conduct all operations in such a manner as to prevent the erosion of the land, pollution of the water resources, and damage to the watershed. The Permittee will do everything necessary to prevent or reduce to the fullest extent the scarring of the land for the lifetime of this permit.

(28) At the direction of the authorized officer, gates, felled trees and live plantings will be placed across the right-of-way at potential access points to block general motorized access.

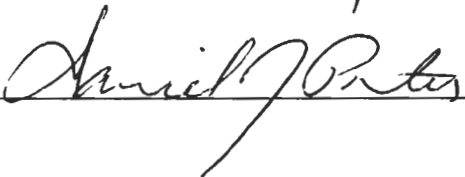
(29) Permittee will properly maintain gates, barriers, signs, and all other facilities in good operating condition and in a timely manner to the satisfaction of the authorized officer.

(30) The rights herein granted provide for only the single pipe herein designated and further, said rights conveyed in this instrument cannot be transferred to another party without the written approval of the authorized officer.

(31) Consistent with 50 C.F.R. 25.21(h), the authorized officer may require permit modifications at any future time to ensure compatibility with the use and occupancy of the land. Additional permit stipulations may be added over the life of the permit based on new information, technologies, or concerns.

THIS IS TO CERTIFY that the Permittee hereby accepts the right-of-way permit described in this instrument, together with all terms and conditions thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2006.




Tesoro Alaska Pipeline Company

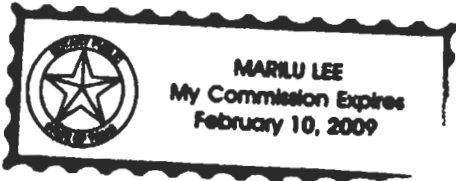
ACKNOWLEDGEMENT

STATE OF Texas)
) ss.
COUNTY OF Bexar)

THIS IS TO CERTIFY that on the 17th day of May, 2006, before me, a Notary Public in and for the State of Texas, duly commissioned and sworn as such, personally appeared Daniel J. Porter, whose title is Sr Vice Pres, Tesoro Alaska Pipeline Company, a Delaware corporation, who executed the within instrument on behalf of the company, and who acknowledged to me that the same was signed freely and voluntarily for the uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first written above.


Notary Public in and for Bexar County, Texas



(SEAL)

My commission expires:

The Secretary of the Interior, acting by and through her authorized representative has executed this permit, known as P-3-KE, for the United States of America on this 19th day of May, 2006.

Sharon N. Janis
Sharon N. Janis, Chief, Division of Realty
U.S. Fish and Wildlife Service

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 19th day of MAY, 2006, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Sharon N. Janis, known to me to be the Chief, Division of Realty, U.S. Fish and Wildlife Service, Region 7, who executed the within instrument and who acknowledged to me that the same was signed freely and voluntarily for the uses and purposes therein stated.

WITNESS my hand and notarial seal the day and year first above written in this certificate.

(SEAL)

Susan A. Lakomski
Notary Public in and for Alaska
My commission expires: 5/7/09

NOTARY — • — PUBLIC
SUSAN A. LAKOMSKI
STATE OF ALASKA

Point Possession Area Map

Kenai National Wildlife Refuge



- State of Alaska Land
- Private Land
- Refuge Land
- Wilderness Area
- Tesoro Pipeline
- Refuge Boundary



08-0018 2/04/03 JGB

Township 10 North, Range 7 West - SM

Township 11 North, Range 6 West - SM

Point Possession

Chickaloon Bay

Diamond Lake

Township 10 North, Range 6 West - SM

